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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,857	02/11/2004	William Gatling	4731-003/COD	3892

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EXAMINER

JIANG, CHEN WEN

ART UNIT PAPER NUMBER

3744

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/776,857	Applicant(s) GATLING ET AL.	
	Examiner Chen-Wen Jiang	Art Unit 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-36 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-24 and 31-36 is/are allowed.
- 6) ☒ Claim(s) 25 and 27-30 is/are rejected.
- 7) ☒ Claim(s) 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20050502, 20050201</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 25,27,28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkinson (GB 2235780) in view of Brown et al. (U.S. Patent Number 3,343,151).

Wilkinson discloses a temperature monitoring apparatus for monitoring the temperature of items retained, stored, or displayed in refrigerated cabinets or hot cabinets. The apparatus comprises a simulator in a casing, temperature sensing means adapted to sense the temperature of the simulator and a micro-processing means to allow the simulated characteristics to be modified in accordance with the product temperature. The simulator comprises material whose characteristics under temperature change are similar to a specific product over a specific temperature change. The apparatus may include a transmitter and receiver, in the form of a radio pager, to a remote location. However, Wilkinson does not disclose attachment. Brown et al.

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disclose a sensor unit 17 including a housing 18 carrying the simulator 10 with bracket mounting on the wall in the same field of endeavor for the purpose of monitoring food temperature.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Wilkinson with bracket in view of Brown et al. so as to mount the probe.

3. Claims 25,27,28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCain et al. (U.S. Patent Number 4,468,135) in view of Heagle et al. (U.S. Patent Number) or Kail (U.S. Patent Number 5,959,529) and further in view of Brown et al. (U.S. Patent Number 3,343,151).

McCain et al. disclose a thermal simulator and method for a flexible pouch in which food is cooked and sterilized. It is user's choice to have the apparatus and method used on either heating or cooling. The simulator 10 is provided which approximates the heat diffusivity of food within a flexible retort pouch. The simulator 10 consists of a thermal sensor 12 centrally disposed within a block 14 and a computing apparatus 20 is preferably employed to relate measured temperatures to meaningful thermal parameters. The controller changes operating conditions until a desired uniformity of heat transfer rates at all locations within said chamber is achieved. Heagle et al. and Kail et al. disclose temperature sensor with transceiver for remote control. Brown et al. disclose a sensor unit 17 including a housing 18 carrying the simulator 10 with bracket mounting on the wall in the same field of endeavor for the purpose of monitoring food temperature. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of McCain et al. with a wireless transceiver controller in view of Heagle et al. or Kail et al. and attachment in view of Brown et

al. so as to mount and monitor the probe. Under the principals of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *Ir re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

4. Claims 25,27,28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butts (U.S. Patent Number 3,690,175) in view of Heagle et al. (U.S. Patent Number) or Kail (U.S. Patent Number 5,959,529) and further in view of Brown et al. (U.S. Patent Number 3,343,151).

Butts discloses a mechanism for predicting food temperatures of a foodstuff model shown in a display case. FIG. 4 is a time-temperature chart comparing the actual temperature at the surface of a piece of meat with that taken by the model shown in Figs.1 through 3 under identical environmental conditions. This means that they have the similar thermal properties. A thermocouple 8 is mounted on the model and connected to a meter 20. The display case is maintained at a certain temperature. Fig.6 shows the simulated article temperature and actual foodstuff temperature. Heagle et al. and Kail et al. disclose temperature sensor with transceiver for remote control. Brown et al. disclose a sensor unit 17 including a housing 18 carrying the simulator 10 with bracket mounting on the wall in the same field of endeavor for the purpose of monitoring food temperature. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Butts with a wireless transceiver controller in view of Heagle et al. or Kail et al. and attachment in view of Brown et

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al. so as to mount and monitor the probe. Under the principals of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *Ir re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

Allowable Subject Matter

5. Claims 20-24 and 31-36 are allowed.
6. Claim 26 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (571) 272-4809. The examiner can normally be reached on Monday-Thursday from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chen-Wen Jiang
Primary Examiner

A handwritten signature in black ink, consisting of a series of loops and a final horizontal stroke, positioned to the right of the name and title.